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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/523,440

10/07/2005

Harald Albrecht

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7055 7590 12/01/2009  
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EXAMINER

VU, JAKE MINH

ART UNIT

PAPER NUMBER

1618

NOTIFICATION DATE

DELIVERY MODE

12/01/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com  
pto@gbpatent.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/523,440	<b>Applicant(s)</b> ALBRECHT ET AL.	
	<b>Examiner</b> Jake M. Vu	<b>Art Unit</b> 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-30 is/are pending in the application.
- 4a) Of the above claim(s) 16,17,21-23,29 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-15,18-20 and 24-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Receipt is acknowledged of Applicant's Restriction Requirement Response filed on 09/08/2009; and Amendment filed on 04/10/2009.

- Claims 1-10 have been cancelled.
- Claims 11-30 have been added.
- Claims 11-30 are pending in the instant application.
- Claims 16-17 and 29-30 are drawn to non-elected species.
- Claims 16-17, 21-23, 29-30 have been withdrawn from consideration.

### ***Election/Restrictions***

Applicant's election of Group I (claims 11-20 and 24-30) and specie of potassium stearate in the reply filed on 09/08/2009 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 18-19, 26-27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to

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one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In this instance, Applicant failed to describe in a reasonable generic manner to show that Applicant envisioned the generic concept of surfactants having an HLB value of greater than 25. Applicant specification does not disclose what these surfactants are, wherein the closest prior art, PATEL (US 6,569,463), disclosed that only sodium lauryl sulfate has an HLB value greater than 25 (see Patel at col. 22, linen 43). Thus, Applicant failed to show that the large genus was contemplated at the time of filing.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11-13, 15, 18-20, 24-27 are rejected under 35 U.S.C. 102(b) as being anticipated by McATEE et al (US 2002/0009484) as evidence by PATEL et al (US 6,569,463).

Applicant's claims are directed to a substrate impregnated with a cosmetic composition comprising: potassium fatty acid salts with 8-20 carbon atoms; one or more surfactant having an HLB value greater than 35; polysorbates. Additional limitations include: substrate is a wipe of a nonwoven fabric.

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McATEE teaches a substrate impregnated (see [0029]) with a cosmetic composition comprising: potassium fatty acid salts with 10-20 carbon atoms (see [0116]); one or more surfactant having an HLB value greater than 35, such as sodium lauryl sulfate (see [0115]; and [0122]); polysorbates, such as polysorbate-80 (see [0190]). Additional disclosures include: HLB value of greater than 10 and mixtures thereof (see [0110]); substrate is a wipe (see [0060]) of a nonwoven fabric (see [0033]).

PATEL disclosed that sodium lauryl sulfate has an HLB value of 40 (see col. 22, line 43).

Note, even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). In this instance, the patentability of the product does not depend on the process of dissolved fatty acid salts in a heated cosmetic preparation and followed by cooling as recited in claim 25.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-15, 18-20 and 24-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over McATEE (US 2002/0009484) as evidence by PATEL et al (US 6,569,463) in view of VERDREL-LAHAXE et al (US 6,752,998).

As discussed above, McATEE teaches a substrate impregnated (see [0029]) with a cosmetic composition comprising: potassium fatty acid salts with 10-20 carbon atoms (see [0116]); one or more surfactant having an HLB value greater than 35, such as sodium lauryl sulfate (see [0115]; and [0122]); polysorbates, such as polysorbate-80 (see [0190]). Additional disclosures include: HLB value of greater than 10 and mixtures thereof (see [0110]); substrate is a wipe (see [0060]) of a nonwoven fabric (see [0033]). Wherein PATEL disclosed that sodium lauryl sulfate has an HLB value of 40 (see col. 22, line 43).

McATEE does not specifically teach using potassium stearate, which is an 18 carbon fatty acid.

VERDREL-LAHAXE teaches anionic surfactants, such as potassium stearate, were well-known in the art. Additional disclosures include: laurate, which is a 12-carbon fatty acid; myristate, which is a 14-carbon fatty acid; palmitate, which is a 16-carbon fatty acid; and mixtures thereof (see col. 5, line 36-38).

It would have been obvious to the person of ordinary skill in the art at the time the invention was made to incorporate potassium stearate into McATEE's composition. The person of ordinary skill in the art would have been motivated to make those modifications and reasonably would have expected success because these are well-known functional equivalent of surfactants used in the cosmetic industry.

Note, even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). In this instance, the patentability of the product does not depend on the process of dissolved fatty acid salts in a heated cosmetic preparation and followed by cooling as recited in claim 25.

### ***Response to Arguments***

Applicant argues that McATEE does not teach or suggests any of the subject matter of the claims submitted herewith. In particular, the only mentioning of salts of fatty acids appears to be in paragraph [0116] of McATEE. This passage mentions salts of fatty acids without mentioning any specific fatty acid and merely as "[o]ther anionic materials useful herein". Other indications that salts of fatty acids are not considered particularly well suited for the purposes of the invention of McATEE are the fact that these salts are not included in the long list of preferred anionic lathering surfactants set forth in paragraph [0122] of McATEE (let alone in the list of especially preferred anionic surfactants in paragraph [0123] thereof or the long list of preferred lathering surfactants in paragraph [0148] thereof) and the fact that in none of the numerous exemplified compositions of McATEE any salts of fatty acids are employed. Accordingly, there is no apparent reason for one of ordinary skill in the art to use salts of fatty acids comprising

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from 8 to 20 carbon atoms per molecule in combination with one or more surfactants for the cleansing articles of McATEE. The Examiner finds this argument unpersuasive, because these salts of fatty acids are simply soaps (see [0116]), which are well-known to be used in cleansing articles for skin or hair (see McATEE's title).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



***Telephonic Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jake M. Vu whose telephone number is (571)272-8148. The examiner can normally be reached on Mon-Tue and Thu-Fri 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jake M. Vu/  
Primary Examiner, Art Unit 1618